

The Hon. Marc Barreca  
Chapter 13  
Location: Telephonic (Everett)  
Hearing Date: June 9, 2021  
Hearing Time: 9:00 a.m.  
Response Date: June 2, 2021

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
Seattle Division**

In re:

RONALD EDGAR HOWELL,  
DEE LORENE SHISHIDO,  
Debtors.

Chapter 13

Bankr. Case No.: 15-15924-MLB

**REPLY IN SUPPORT OF MOTION FOR  
AN ORDER RELIEVING NAVIENT  
SOLUTIONS, LLC AND NAVIENT  
CORP. FROM ORDERS OF CONTEMPT**

COMES NOW Navient Solutions, LLC and Navient Corporation (sometimes referred to collectively herein as “Navient”), by and through their attorneys, Samuel J. Dart and the law firm of Eisenhower Carlson PLLC, and Joseph A. Florczak and the law firm of McGuireWoods LLP<sup>1</sup>, and hereby submit Navient’s *Reply In Support of Motion for an Order Relieving Navient Solutions, LLC and Navient Corp. from Orders of Contempt* and respectfully state as follows:<sup>2</sup>

**APPLICABLE LEGAL STANDARD**

In the Ninth Circuit, as elsewhere, once a defendant has established a prima facie error in service, the party attempting to effect service bears the burden of proof to show effective service. *See, e.g., In re Villar*, 317 B.R. 88, 94 (9th Cir. BAP 2004) (once defendant has established a prima facie error in service, the party attempting to effect service bears the burden of proof); *In re Ass’n of*

<sup>1</sup> Joseph Florczak and the law firm of McGuireWoods are authorized to appear *pro hac vice* pursuant to the Court’s Order dated May 18, 2021. *See* ECF No. 91.

<sup>2</sup> As used herein, “Motion” refers to *Navient’s Motion for an Order Relieving Navient Solutions, LLC and Navient Corp. from Orders of Contempt* [Dkt. No. 87] and “Opposition” refers to the Debtors’ opposition to the Motion [Dkt. No. 96]. The “Shishido Decl.” refers to the declaration filed in support of the Opposition [Dkt. No. 96-1]. Capitalized terms not otherwise defined have the meaning given them in the Motion.

1 *Volleyball Pros.*, 256 B.R. 313, 317 (Bankr. C.D. Cal. 2000) (“The plaintiff bears the burden of  
2 proving that the service recipient is a qualified recipient of service.”).

3 Service by first class mail is not permitted under the Federal Rules of Civil Procedure and is  
4 unique to bankruptcy proceedings. Devoid of the traditional safeguards and certainty of in-person  
5 service, courts require strict compliance Bankruptcy Rule 7004, and have held that mere mailing to  
6 a P.O. Box does not constitute “substantial compliance” with service rules sufficient to protect a  
7 litigant’s due process rights. *Villar*, 317 B.R. at 92–93 (“[S]ervice to [a] post office box does not  
8 comply with the requirement to serve the Motion to the attention of an officer or other agent  
9 authorized as provided in Rule 7004(b)(3).” and did not protect due process rights); *In re Sun*  
10 *Healthcare Group, Inc. v. Mead Johnson Nutritional (In re Sun Healthcare Group, Inc.)*, 2004 WL  
11 941190, 2004 Bankr. LEXIS 572, \*18 (Bankr. D.Del. 2004) (setting aside default judgments  
12 because the debtor plaintiffs did not serve an officer of the defendant and only used a post office  
13 box, with the service not addressed to an officer or agent).

14 Further, not just any agent can receive service on behalf of a corporation. Rule 7004(b)(3)  
15 specifies that the agent must be a managing or general agent or an agent specifically designated for  
16 such purpose by appointment or by law. *Volleyball Pros.*, 256 B.R. at 317. Service on any other  
17 corporate employee is not sufficient. *Id.*; *see also Gottlieb v. Sandia Am. Corp.*, 452 F.2d 510, 513–  
18 14 (3d Cir.1971). Most notably, service not directed to the attention of a particular person is not  
19 sufficient. *Volleyball Pros.*, 256 B.R. at 317.

## 20 ARGUMENT

21 In the Motion, Navient has established defective service with respect to both Navient  
22 Solutions, LLC and Navient Corporation. *See* Motion at 7-9. Accordingly, it is the Debtors who  
23 bear the burden of demonstrating that service is effective. This they have not done.

### 24 **I. THE DEFECTIVE SERVICE ON NAVIENT SOLUTIONS, LLC WARRANTS** 25 **VACATEUR OF THE CONTEMPT ORDERS**

26 The Debtors and Navient agree about one thing: The mailing of the notices to a P.O. Box  
27 of Navient Solutions did not comply with Bankruptcy Rule 7004. *See* Opposition at 8.  
28 Nevertheless, the Debtors strain to argue that their admittedly defective mailings on Navient

1 Solutions should be rendered valid on three basic theories, each suffering from one or more fatal  
2 defect: (a) Navient Solutions, LLC consented to the bankruptcy court's jurisdiction through the  
3 filing of its initial proof of claim, (b) Navient Solutions, LLC received actual notice of the  
4 defectively-served papers sufficient to protect its due process rights; and (c) the Debtors' service on  
5 the CEO of Navient Corporation is valid for Navient Solutions, LLC under an agency theory.

6 **A. As is Their Burden, Debtors Have Made No Showing Whatsoever of Receipt of**  
7 **Service by an Authorized Agent or Officer of Navient Solutions**

8 The Debtors argue that the admittedly defective service on Navient Solutions should be  
9 rendered sufficient because Navient Solutions "received" the notices at its P.O. Box. *See* Opposition  
10 at 6, 8. Established case law demonstrates that mere receipt by "someone" at a corporate entity is  
11 not sufficient for valid service. Such a mailing

12 does not trigger the presumption that a person who was responsible for litigation  
13 received actual knowledge about it before the order was granted. . . . Rule 7004(b)(3)  
14 states what is required for adequate service upon a corporation. A presumption that  
15 the mail was received by [the corporation] does not include the presumption that the  
16 motion was received by an officer or authorized agent. Only if the notice is "directed  
to a corporation and the attention of an officer or agent as identified in Rule  
7004(b)(3)," can it be considered to have been received by a person who is charged  
with responding to the service.

17 *In re Villar*, 317 B.R. 88, 94–95 (B.A.P. 9th Cir. 2004); *see also In re Monk*, No. ADV 10-6067-  
18 FRA, 2013 WL 4051864, at \*4 (Bankr. D. Or. Aug. 9, 2013) ("[A] presumption that the mail was  
19 received by [defendant] does not include the presumption that [it] was received by an officer or  
20 authorized agent.")

21 Here, none of the certificates of service proffered by the Debtors show that any attempt at  
22 service was directed to an officer or agent of Navient Solutions, as required by Rule 7004(b)(3), and  
23 the Debtors offer no other evidence that service was effected upon such a person. The burden to  
24 prove effective service is upon the Debtors, and they have failed to meet that burden.

25 **B. The Filed Proofs of Claim Do Not Permit Debtors to Assert Jurisdiction Based**  
26 **Upon Defective Service**

27 The Debtors next argue that Navient Solutions' initial filing of a proof of claim subjects it  
28 to the general jurisdiction of the bankruptcy Court. This argument ignores that each such proof of

1 claim was subsequently amended to name United Student Aid Funds, Inc., a student loan guarantor  
2 affiliated with Great Lakes Higher Education Corporation, as the entity holding the claim.  
3 See Exhibit B to the Florczak Declaration filed contemporaneously herewith. In any event,  
4 numerous cases have held that the filing of a proof of claim does not relieve the moving party from  
5 the obligation to provide adequate service under Bankruptcy Rule 9014 and Bankruptcy Rule 7004.  
6 See *In re Levoy*, 182 B.R. 827, 833–34 (B.A.P. 9th Cir. 1995) (finding formal service of process  
7 was required for an objection to a filed proof of claim); *In re Morrow*, No. 01-42229, 2003 WL  
8 25273857, at \*2 (Bankr. D. Idaho Apr. 16, 2003) (“Defective service of [an objection to a filed proof  
9 of claim] would alone be grounds to overrule it.”). As set forth above, Navient has established that  
10 service was defective, and the Debtors have made no showing that the service was sufficient to  
11 comport with due process of law.

12 **C. Debtors Assert No Basis Whatsoever that Navient Solutions, LLC Is an Agent**  
13 **of Navient Corporation.**

14 The Debtors also raise the specious argument that Navient Solutions, LLC is the “agent” of  
15 Navient Corporation. But a “parent-subsidary relationship alone is insufficient to attribute the  
16 contacts of the subsidiary to the parent for jurisdictional purposes.” *Harris Rutsky & Co. Ins. Servs.*  
17 *v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003). A subsidiary’s contacts may be  
18 imputed to its parent for personal jurisdiction purposes only where the subsidiary is the parent’s  
19 alter ego. *Id.* To demonstrate a parent and its subsidiary are alter egos, the *plaintiff* must establish  
20 a prima facie case that the two companies share “such unity of interest and ownership” that the  
21 companies’ separateness no longer exists and “failure to disregard [their separate identities] would  
22 result in fraud or injustice.” *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir.2001) (quotation  
23 omitted). Typically, this would involve showing the parent controls the subsidiary’s internal affairs  
24 or daily operations. *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th  
25 Cir.1980). In other words, a parent may involve itself directly in its subsidiary’s activities without  
26 becoming an alter ego “so long as that involvement is consistent with the parent's investor status.”  
27 *Harris Rutsky & Co. Ins. Servs., Inc.*, 328 F.3d at 1135 (quotation omitted).

28 The Debtor’s sole evidence in support of an agency relationship is a citation to Navient

1 Solutions' website showing that it is a subsidiary of Navient Corporation. There is no credible  
2 assertion, let alone evidence, that Navient Solutions is the "alter ego" of Navient Corporation such  
3 that service on Navient Corporation could permit this Court's exercise of jurisdiction over Navient  
4 Solutions.

## 5 **II. THE IMPROPER SERVICE ON NAVIENT CORPORATION LIKEWISE** 6 **WARRANTS VACATEUR OF THE CONTEMPT ORDERS**

### 7 **A. The Debtors Knew or Should Have Known Navient Solutions Was the Proper** 8 **Service Party**

9 The Debtors knew or should have known that Navient Solutions was the proper party for  
10 service. Contrary to their representation that their billing statements contain no reference to Navient  
11 Solutions, the billing statement *attached to their own declaration* states in black-and-white: **"Your**  
12 **loan servicer – Your loans are serviced by Navient Solutions, LLC."** Shishido Decl. at 11. The  
13 Debtors' assertions that they received servicing communications from "Navient" are likewise  
14 unavailing. The website [www.navient.com](http://www.navient.com), which the Debtors wrongly identify as the website for  
15 Navient Corporation in the Navient Contempt Motion, plainly identifies that Navient Solutions,  
16 LLC is the copyright holder for the website and the holder of the "Navient" service marks and related  
17 logo. By contrast, there is no evidence anywhere in the record to support that Navient Corporation  
18 was involved with servicing the Debtors' loans.

### 19 **B. Proper Service Information was Readily Available to Debtors**

20 Lest the Court be under the impression that proper service information for Navient Solutions  
21 was difficult to find, simple entry of "Navient Solutions, LLC" into the business search function on  
22 the Washington Secretary of State's website (the natural starting point for determining service  
23 information for a corporate entity) instantly brings up the correct address, registered agent, and name  
24 of a corporate officer (John M. Kane) authorized to accept service for Navient Solutions.  
25 See Exhibit A to the Florczak Declaration filed contemporaneously herewith.

## 26 **III. MERITORIOUS DEFENSES LIKEWISE JUSTIFYING VACATEUR OF THE** 27 **CONTEMPT ORDERS**

28 As with their arguments attempting to rehabilitate defective service, the Debtors' arguments

1 against Navient's merits defenses under Rule 60(b)(1) are similarly without merit. As set forth in  
2 the Motion, each of the Contempt Orders states that Navient Solutions or Navient Corporation  
3 violated the "discharge order, 11 U.S.C. §524(i), the confirmed plan, and the order of confirmation."  
4 None of these is correct as a matter of law.

5 **A. Navient Cannot Be Sanctioned for Violation of the Discharge Injunction For**  
6 **Debt That Has Not Been Discharged**

7 The Debtors set forth at length the servicing communications from Navient Solutions to the  
8 Debtors, claiming they violate "the statute." See Opposition at 9. The only possible basis for such  
9 communications to violate the statute would be if they constituted an act to collect a discharged debt  
10 under Section 524(a) of the Bankruptcy Code. The Debtors PLUS loans, however, were not  
11 discharged. As set forth in the Motion, the Debtor's PLUS loans are federal student loans not subject  
12 to discharge absent a finding of undue hardship, and none of the Debtors' Chapter 13 Plan, the  
13 Court's confirmation, or the discharge order provides for the discharge of such loans. A dispute  
14 regarding whether such loans were ever paid in full does not constitute a violation of the discharge  
15 injunction or any Court order.

16 **B. Nothing in The Judicial Record Supports a Finding Navient Failed to Credit**  
17 **Plan Payments Under Section 524(i)**

18 Section 524(i) of the Bankruptcy Code provides that the willful failure to credit payments  
19 received under a confirmed plan constitutes a violation of the discharge injunction. 11 U.S.C. §  
20 524(i). As set forth in the Motion, the only evidence regarding plan payments shows that the Chapter  
21 13 Trustee's payments made on account of the Debtors' PLUS loans were made to United Student  
22 Aid Funds, Inc., a student loan guarantor unaffiliated with Navient. This is insufficient to  
23 demonstrate that Navient has failed to apply payments, let alone that such alleged failure is "willful."

24 **CONCLUSION**

25 Accordingly, for the reasons set forth above and in the Motion, the Court should vacate each  
26 of the Contempt Orders, as well as grant any other relief that is just and proper.

1 Dated June 18, 2021

Respectfully submitted,

3 **EISENHOWER CARLSON PLLC**

5 By: /s/ Samuel J. Dart  
6 Samuel J. Dart, WSBA No. 47871  
7 909 A Street, Suite 600  
8 Tacoma, Washington 98402  
9 Telephone: (253) 572-4500  
Facsimile: (253) 272-5732  
E-Mail: SDart@Eisenhowerlaw.com

10 *Counsel to Navient Solutions, LLC and Navient Corp.*

11 –and–

12 **MCGUIREWOODS LLP**

13 By: /s/ Joseph A. Florczak  
14 Joseph A. Florczak (to be admitted *pro hac vice*)  
15 77 W. Wacker Drive  
16 Suite 4100  
17 Chicago, IL 60601  
18 Telephone: 312.849.8100  
Email: jflorczak@mcguirewoods.com

19 *Counsel to Navient Solutions, LLC and Navient Corp.*